IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH, AT JAIPUR

S. B. CRIMINAL MISC. PETITION NO. 514/1998

OM SINGH
v
STATE OF RAJASTHAN & ANOTHER

Date of Judgment: **JULY 10, 2007**

Hon'ble Mr. Justice R. S. Chauhan

Mr. B.L. Mandhana for the petitioner.
Mr. B.K. Sharma, Public Prosecutor.

By Court:

This petition arises out of the order dated 5.2.98 passed by the Addl. Sessions Judge, Sikar, whereby the learned Judge has increased the maintenance granted to the non-petitioner by the Addl. Chief Judicial Magistrate vide order dated 14.11.95 from Rs. 300/- to Rs. 500/- per month.

The brief facts of the case are that the petitioner, the husband and the non-petitioner, the wife, were married in March, 1976 in accordance with Hindu rites and customs. The non-petitioner lived with the petitioner for about a year, but subsequently she left him and started living with her father. Therefore, the petitioner filed an application for restitution of

conjugal rights which was decreed in his favour vide order dated 8.1.79. Since the non-petitioner did not rejoin the husband, he filed an application for divorce under Section 13 of the Hindu Marriage Act. Vide order dated 25.8.80, the District Judge, Jaipur City, Jaipur, granted a divorce decree in his favour. Meanwhile,the non-petitioner could not afford to maintain herself. Therefore, she filed an application for maintenance under Section 125 Cr.P.C. Vide order dated 17.12.83 the learned Magistrate granted her a maintenance of Rs. 200/- per month. Since the petitioner was aggrieved with the said order, he filed a revision petition before the learned District & Sessions Judge, who vide order dated 4.8.84 reduced the maintenance from Rs. 200/- to Rs. 100/-. After a lapse of almost a decade, the non-petitioner filed an application under Section 127 Cr.P.C. and prayed that the maintenance be increased as the petitioner was drawing a salary of Rs. 3,100/- per month. Vide order dated 14.11.95, the learned Magistrate increased the maintenance from Rs. 100/- to Rs. 300/-. Since the non-petitioner was still aggrieved with the said order, she filed a revision petition before the District & Sessions Judge,

Sikar. The case was subsequently transferred to the Court of Addl. Sessions Judge, who vide order dated 5.2.98 accepted the revision petition and increased the maintenance from Rs. 300/- to Rs. 500/- per month. Hence, this petition before this court.

Mr. Mandhana, learned counsel for the petitioner, with all vehemence at his command, has argued that since the non-petitioner had not implemented the decree for restitution of conjugal rights, she is disentitled from claiming any maintenance. Secondly, that the pension being received by the petitioner is so meagre that he is unable to maintain the non-petitioner. For, after divorcing the non-petitioner, he has re-married and from his second wife he has two children who also need to be supported. Therefore, the increase in the maintenance casts financial burden, which he is unable to discharge.

On the other hand Mr. B.K. Sharma, the learned Public Prosecutor, has supported the impugned order.

We have heard both the learned counsels and have

perused the impugned order.

It is not only the moral duty, but also a legal responsibility of a husband to maintain the wife. This responsibility has been cast upon the husband by Section 125 of Cr.P.C. The relevant part of which is as under:-

> "125. Order for maintenance of wives, children and parents.-- (1) If any person having sufficient means neglects or refuses to maintain--
> (a) his wife, unable to maintain herself, or
> (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
> (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
> (d) his father or mother, unable to maintain himself or herself,
>
> a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:
>
> Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if

married, is not possessed of sufficient means.

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses for proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

Explanation.--For the purpose of this Chapter,--

(a) “minor” means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) “wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.”

The explanation given in the said provision clearly states that “the “wife” includes a women who has been divorced by, or has obtained a divorce from, her husband and has not remarried. ” Section 125(4) reads as under :-

“125(4) No wife shall be entitled to receive an

allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent."

Admittedly the parties were divorced on 25.8.80 and the maintenance application was moved by the non-petitioner in the year 1983 i.e. after she was divorced by her husband. Therefore, the benefit of Section 125(4) is unavailable to the petitioner. Hence the contention raised by the learned counsel for the petitioner, that since the wife had not rejoined the husband despite the existence of the decree for restitution of conjugal rights, is without merit. After all this court is concerned with the post 1980 period when the husband was granted divorce from the wife.

It does not lie in the mouth of the petitioner to plead that he has insufficient means to maintain the wife. The object of Section 125 Cr.P.C. is to protect women financially and to prevent them from vagrancy and from taking to easy virtues. The framers of law were aware of the fact that the family is the basic unit of the society and vagrancy and easy virtues would

undermined to the existence of the family and, therefore, of the society. Therefore, the law has imposed a duty on the husband to maintain the wife. The husband cannot be permitted to evade his responsibility ostensibly on the ground that he is unable to maintain the wife.

Lastly, considering the present rate of inflation, the cost of living, a maintenance of meager Rs.500/- per month is not too high. Hence, the impugned order is legally valid.

In the result, this petition has no merit. It is, hereby, dismissed.

(R.S. CHAUHAN) J.

MRG.